HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.152 of 2006

Uagram and seven others
All R/o Chakatunwala Grant
Tehsil Parvadun P.S. Raipur
District Dehradun. ... Applicants

Versus

1. State of Uttaranchal
2. Shiv Ram
   S/o Sri Dalit Singh @ Dulli
   R/o Village lower Tunwala
   P.sS. Raipur,
   District Dehradun ... Respondents

Dated :- 08.03.2006

Hon'ble J.C.S. Rawat, J.

1) The petition under section 482 Cr.P.C. has been filed for quashing the entire proceedings and summoning order dated 23.11.2005 passed by the Judicial Magistrate, C.B.I., Dehradun in criminal case No.1114/2005 Shiv Ram Vs. Uag Ram & others under section 147/323 IPC.

2) Brief facts of the case are that on 10.08.2005 the respondent No.2 filed a complaint before the Judicial Magistrate, CBI, Dehradun alleging therein that the applicants reached near the land for which there was a dispute in between the parties. Thereafter, the applicants started digging the land. When the complainant objected them, the applicants became annoyed and started abusing and threatening with the dire consequences. On raising alarm of the complainant, the witnesses reached at the spot and the applicants left the place of incident. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicants vide order dated 23.11.2005. Feeling aggrieved by the order of Magistrate, the present petition has been filed.

3) The learned counsel for the applicants contended that the statements were recorded in a routine manner. It was contended that there is an enmity in between the parties with regard to the land. The Magistrate has not put any questions to the witnesses with regard to the said enmity. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicants has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705,** in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of*

preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence in prima facie committed by all or any of the accused."

4) The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

5) In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The Magistrate should have put the question to the complainant and his witnesses to know the veracity of the incident. The complainant has alleged that there is an enmity in between the parties. The Magistrate should have asked the complainant to produce the documents with regard to the said disputes. He should have put the questions with regard to the land also. The Magistrate should have seen the corroborative evidence.

6) Therefore, the summoning order dated 23.11.2005 passed by the Judicial Magistrate, C.B.I., District Dehradun is set-aside. The case is remitted back with the direction that the Magistrate will decide the same afresh in the light of the observations made above.

7) The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 08.03.2006
LSR